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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,159

03/15/2004

Walter B. Raper

1056

7590

06/08/2005

Walter B. Raper  
6401 Marshall Way  
Gloucester, VA 23061

EXAMINER

COHEN, AMY R

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/801,159

Applicant(s)

RAPER, WALTER B.

Examiner

Amy R. Cohen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION***Specification***Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive; preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.  
  
Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is

separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

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1. The title of the invention is too lengthy. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Light-weight, Portable, Visible Safety Device.

2. The use of the trademark Velcro has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

The appropriate use of the term Velcro is to use VELCRO, hook and loop fasteners.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

3. The disclosure is objected to because of the following informalities:

The above format should be followed regarding the order and content of the specification.

Please see the following patents for acceptable format and content of the Specification Thorp et al. (U. S. Patent No. 6,168,876), Keller et al. (U. S. Patent No. 5,636,588), and McConnell (U. S. Patent No. 5,408,782).

Appropriate correction is required.

### *Drawings*

4. The drawings are objected to because a "Brief Description of the Drawings" is omitted, the "Figure 1" label is used on both the figure including a tree and the figure showing vertical and horizontal panels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the

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appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

5. Claims 1 and 2 are objected to because of the following informalities:

Claims 1 and 2 should be in one sentence format, i.e. the "A" found within the claims (lines 2, 6, 10 of claim 1, lines 2, 6, 10 of claim 2) should not be capitalized. Within each claim, only one embodiment should be described, i.e. only one of the first or second forms. The use of the trademark, Velcro, should be used as described above in paragraph 2, or only the generic term hook and loop fastener should be used.

Please see the following patents for acceptable format and content of the claims Thorp et al. (U. S. Patent No. 6,168,876), Keller et al. (U. S. Patent No. 5,636,588), and McConnell (U. S. Patent No. 5,408,782).

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by McConnell (U. S. Patent No. 5,408,782).

Claim 1: McConnell teaches a panel prefabricated web of sufficient size and bright color (20, 20'), comprising: a substantially longitudinal elongated web of support members forming a light weight prefabricated block having a uniform pattern of structural material formed from one or more layers of one or more materials (Figs. 9 and 10, Col 2, lines 25-50, and Col 4, lines 23-48) and equipped with a buckle, sticky lip, adhesive, or VELCRO (Col 2, line 59-Col 3, line 37) attachment to complete a belt for tree (Figs. 5 and 6) or attach directly to an object such as a car bumper; a first form having a first longitudinal member of blaze orange or other bright color (Col 4, line 58-Col 5, line 46) to be fixed around or on an object such as a tree, near a hunter's stand location as a visual marker (patterns may be used or printed on panel to camouflage from animals that would view the device in black and white); a second form having a first longitudinal member of blaze orange or other bright color to be attached to an object such as a car, aircraft, snow mobile or other object near a person's location that is in possible danger or lost (Col 4, line 58-Col 5, line 46).

Regarding the first and second forms wherein the device is to be attached to an object, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). In this case, the use of attaching the device to a tree, car, aircraft, snow mobile, or other object is considered to be intended use.

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Claim 2: McConnell teaches an elastic coating prefabricated web of sufficient size and bright color (20, 20'), comprising: a substantially vertically elongated web of support members forming a light weight prefabricated block having a uniform pattern of structural material formed from one or more layers of one or more materials (Figs. 9 and 10, Col 2, lines 25-50, and Col 4, lines 23-48) and equipped with a buckle, sticky lip, adhesive, or VELCRO (Col 2, line 59-Col 3, line 37) attachment to complete a belt for tree (Figs. 5 and 6) or attach directly to an object such as a car bumper; a first form having a first vertical member of blaze orange or other bright color (Col 4, line 58-Col 5, line 46) to be fixed around or on an object such as a tree, near a hunter's stand location as a visual marker (patterns may be used or printed on panel to camouflage from animals that would view the device in black and white); a second form having a first vertical member of blaze orange or other bright color to be attached to an object such as a car, aircraft, snow mobile or other object near a person's location that is in possible danger or lost (Col 4, line 58-Col 5, line 46).

Regarding the first and second forms wherein the device is to be attached to an object, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). In this case, the use of attaching the device to a tree, car, aircraft, snow mobile, or other object is considered to be intended use.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose safety aids and/or visual markers DeMott et al. (U. S. Patent No. 6,764,744), Wilson (U. S. Patent No. 6,272,688), Thorp et al. (U. S. Patent No.



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6,168,876), Keller et al. (U. S. Patent No. 6,636,588), Bump, Jr. et al. (U. S. Patent No. 5,398,437), Chan (U. S. Patent No. 5,076,196), Gibson (U. S. Patent No. 5,000,111), Valkenburg (U. S. Patent No. 4,601,538), Dashow (U. S. Patent No. 4,161,249), and Dirks et al. (U. S. Patent No. 3,276,416).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC  
June 3, 2005



Christopher Fulton  
Primary Examiner  
Tech Center 2800